Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter Of	)	
	)	
Revision of the Commission's Program Access Rules	)	MB Docket No. 12-68
	)	
News Corporation and the DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control	)	MB Docket No. 07-18
	)	
Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors, to Time Warner Cable Inc. (subsidiaries), Assignees, et al.	)	MB Docket No. 05-192

COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

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EXECUTIVE SUMMARY

Much has changed in the multichannel video programming distribution (MVPD) marketplace in the years since the initial passage of the 1992 Cable Act that brought about the Commission's program access rules. Since their initial passage, the number of MVPD subscribers has grown from 59.7 million to 101.2 million, while MVPD penetration has increased from 65% in 1995, to more than 85%. Equally important, traditional phone companies have moved aggressively into the MVPD marketplace.

Even more important is one issue barely addressed by the Commission in the early years of the program access rules: broadband. Today's MVPD marketplace has expanded, and now encompasses vigorous competition between cable and LEC providers for voice and broadband subscribers. The Commission acknowledged this recent development by noting that broadband providers have invested in network upgrades to deliver faster broadband speeds and enter new product markets, with "cable companies providing telephony and telephone companies offering multichannel video."

While much has changed during this period, one issue has remained constant: the importance of access to vertically integrated cable programming – much of which was locked up by the cable incumbents during the time of their exclusive franchises and before they faced meaningful competition. In some respects, the importance of access to vertically integrated cable programming has increased since the rules were last extended in 2007. This is due to the continued control of must-have programming by a growing number of vertically integrated cable MVPDs, and the substantial growth in the number of regional sports networks (RSNs) controlled by vertically integrated cable providers. Access to this vertically integrated content is critical for all competitive MVPDs, and particularly those providing service in remote and rural areas.

A critical element to the Commission's analysis relates to programming owned by vertically integrated programming cable MVPDs. Vertical integration by cable incumbents has increased since the Commission's last extension, with vertically integrated RSNs nearly tripling from 18 in 2007, to 57 today, and vertically integrated cable operators expanding from 5 in 2007, to 6 today. Moreover, the number of vertically integrated networks remains virtually unchanged at 115.

One of the most troubling expansions relates to RSNs under the control of cable incumbents, which have increased substantially since 2007. In fact, more than half of all RSNs today – a total of 57 – are vertically integrated with a cable operator. Given the well-established must-have, non-replicable nature of such programming, the Commission must ensure at a minimum that its program access rules continue to apply to vertically integrated RSNs. The Commission has repeatedly cited RSNs as a major concern in the MVPD marketplace.

Vertically integrated programmers continue to have both the incentive and ability to favor their affiliated cable operators over competitive MVPDs. The Commission's recent orders regarding Cablevision's withholding of RSNs from its competitors underscores this point. In previous instances, the Commission pointed to the withholding of cable-affiliated RSNs in Philadelphia and San Diego, where competitive MVPD subscription rates were 40% and 33% below, respectively, of what would otherwise be expected. This is exactly the type of anti-competitive behavior the Commission's rules were meant to address, and there is simply no policy basis for the Commission to sunset these protections.

Many of the reasons acknowledged by the Commission in 2007 remain true today for wireline entrants who continue to mature in the MVPD marketplace. RSNs in particular are one area where the incentive and ability of vertically integrated cable MVPDs to withhold such content has substantially increased since the Commission's last extension of the program access rules in 2007. As their history clearly demonstrates, given the opportunity, vertically integrated cable providers can and will withhold exclusive programming, such as RSNs, to harm competitors.

Alternative approaches – such as the market-by-market analysis proposed by the Commission – raise several problematic issues, particularly for smaller, rural wireline video entrants whose ability to offer competitive video services is essential to increasing rural broadband deployment. Smaller, wireline entrants – particularly those competing in the vast majority of smaller DMAs – are competing against large, national cable incumbents that are much better able to spread the costs of programming across their nationwide customer base. Such an approach would inure solely to the benefit of major cable incumbents, and would allow for sunset of the rules in the very markets where wireline competition to cable is most needed.

It would be premature for the Commission to sunset its program access rules, given that the vast majority of consumers – nearly 85% – obtain their video programming through MVPD services. Even with the ability of consumers to access content through other means – such as reliance on over the air technologies or Internet streaming – MVPD services remain the predominant source of accessing such content.

Likewise, cable's control over vertically integrated programming continues, and in some respects has actually *increased* since the court's decision. Incumbent cable operators still retain approximately 58% of the MVPD market, and the six vertically integrated cable operators still retain approximately 52% of the MVPD market. While incumbent cable's share of the MVPD market has indeed decreased since 2007, some vertically integrated cable MVPDs have actually increased their subscriber base since the Commission last extended the program access rules.

One of the main purposes of the program access rules is to increase competition in the MVPD marketplace. The increased competition resulting from the program access rules is also leading to increased broadband penetration and adoption – an important Administration and Commission goal. But in order for the Commission to realize the many benefits from this increased competition, it is essential that wireline video entrants are afforded sufficient time to mature in the MVPD marketplace. Wireline entrants are the only video competitors that act as an effective restraint on cable prices. In order to foster this continued competition, it is imperative that the Commission provide local telephone companies with sufficient time to mature in the competitive MVPD marketplace.

Finally, the Commission's extension of the program access rules is an essential component to realizing the Obama Administration's broadband policies. In addition to acknowledging the substantial competitive and consumer benefits that flow from the rules in the MVPD marketplace, the Commission has consistently emphasized how access to critical vertically integrated programming fuels broadband deployment and increases broadband penetration. The key to ensuring that LECs can deploy and offer competitive bundled voice, video and broadband services in rural areas is continued reasonable access to video content. It is therefore imperative that the Commission retain its program access rules.

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COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] is pleased to submit its comments in response to the Federal Communications Commission's (Commission) above referenced Notice of Proposed Rulemaking (Notice).[2] The Commission seeks comment on whether it should retain, sunset, or relax the prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming for non-affiliated multichannel video programming distributors (MVPDs). Given the ongoing – and in some cases, increasing – control of vertically integrated programming content by incumbent cable operators in the MVPD marketplace, and the critical

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[1] USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

[2] *See* Notice of Proposed Rulemaking, FCC, *In the Matter of Revision of the Commission's Program Access Rules,* FCC 12-30, 77 Fed. Reg. 24302 (April 23, 2012) (*Notice*).

importance of MVPD services to broadband deployment, USTelecom supports a full extension of the Commission's program access rules.

I. THE CONTINUED NEED FOR THE PROGRAM ACCESS RULES.

Much has changed in the MVPD marketplace in the years since the initial passage of the 1992 Cable Act that brought about the Commission's program access rules, but there is still a continued need for the rules. The Commission's Video Competition report from 1995 confirms that the vast majority of the changes in the MVPD marketplace have been overwhelmingly beneficial to consumers.[3] In what was then the Commission's second report on the status of video competition, it noted that less than 59.7 million consumers even subscribed to MVPD services (just over a 65% penetration rate);[4] direct broadcast satellite (DBS) providers of MVPD services had just exceeded one-million customers;[5] and local exchange carriers (LECs) were only in the planning stages of deploying video offerings.[6]

Perhaps even more telling is the one issue barely addressed by the Commission in its 1995 report: broadband. The Commission made only passing reference to broadband, and dedicated a mere three paragraphs to discussion of then-evolving dial-up Internet technology.[7] Among other things, it noted that the main categories of uses for dial-up Internet involved low-bandwidth activities, such as e-mail, user groups and interactive "chats."[8] The Commission also

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[3] Second Annual Report, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 95-491, 61 Fed. Reg. 1932 (January 24, 1996) (*Second Annual Report*).

[4] *Id.*, ¶7.

[5] *Id.*, ¶9.

[6] *Id.*, ¶86 (noting that LEC plans for entry into the video marketplace had "evolved considerably," but that it was "difficult to predict the level of future LEC entry into markets for the delivery of video programming over the long run, or the form that entry will take.").

[7] *Second Annual Report*, ¶¶125-127.

[8] *Id.*, ¶127.

presciently opined that as bandwidth increases, networks "may increasingly distribute more complex data types, such as voice and video, as well as more traditional data."[9] At the time, however, that cable Internet access technology was only "being tested," and the cable industry was only beginning to develop "a standard for cable modem and Internet access technology."[10] The Commission predicted, however, that while the Internet was in an early stage, it had "the potential to affect the video marketplace, perhaps significantly."[11]

Fast forward to today, and not only has the Commission's prediction become a reality, but the MVPD marketplace has changed dramatically. Today, two of the top three MVPDs are DBS providers and MVPD penetration has increased from 65% in the mid-1990s to approximately 85% today.[12] And in more recent years, what were considered traditional phone companies in the 1990s have moved aggressively into the MVPD marketplace.

But the most important and fundamental change in the MVPD marketplace in recent years has been the provision of broadband. Today's MVPD marketplace has expanded, and now encompasses vigorous competition between cable and LEC providers for voice and broadband subscribers, as well as MVPD subscribers. The Commission acknowledged this recent development in its National Broadband Plan when it noted that broadband providers had invested in network upgrades to deliver faster broadband speeds and enter new product markets, with "cable companies providing telephony and telephone companies offering multichannel video."[13]

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[9] *Id.*

[10] *Id.*

[11] *Second Annual Report*, ¶127.

[12] *See Id.*, ¶7. Data regarding the current MVPD penetration rate is based on USTelecom analysis utilizing Frost and Sullivan Stratecast and US Census data. *See*, note 61, *infra*.

[13] FCC Report, *Connecting America: The National Broadband Plan*, p. 37 (March 16, 2010) (*National Broadband Plan*) (available at: http://www.broadband.gov/download-plan/) (visited June 18, 2012).

To underscore this point, in recent years Comcast has emerged as one of the largest providers of residential voice services and Time Warner now views itself primarily as a "broadband provider."[14]

While many things have changed in the MVPD marketplace since 1995,[15] one issue has remained constant: the importance of access to vertically integrated cable programming – much of which was locked up by the cable incumbents during the time of their exclusive franchises and before they faced meaningful competition. The cable incumbents' unique control over much of the programming that would-be competitors need to compete continues to have lingering and significant effects on video competition. In 1995, shortly after adoption of the rules, the Commission acknowledged that the rules "help[ed] emerging competitors to cable obtain access to programming."[16] And just last year, the Commission on two separate occasions enforced the rules after determining that the withholding of vertically integrated programming "significantly hinders" competition and "harms consumers by limiting video competition" in certain markets.[17]

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[14] Holman Jenkins, Jr., *Wild, Wild Wireless*, Wall Street Journal, December 7, 2011 (available at: http://online.wsj.com/article/SB10001424052970204903804577082161265202628.html) (visited June 12, 2012).

[15] For example, home satellite dishes and multichannel multipoint distribution service providers accounted for up 4.5 million subscribers and 600,000 subscribers, respectively in 1995. Today, these services are largely non-existent. According to the Commission's most recent video competition report, each of these MVPDs had 111,000 and 100,000 subscribers, respectively as of June 2006. *See*, Thirteenth Annual Report, *Annual Assessment Of The Status Of Competition In The Market For The Delivery Of Video Programming*, 24 FCC Rcd. 542, FCC 07-206, Appendix B, Table B-1, p. 143 (released January 16, 2009).

[16] *Second Annual Report*, ¶160.

[17] *See*, Order, *In the Matter of AT&T Services, Inc. and Southern New England Telephone Company d/b/a AT&T Connecticut, Complainants v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants*, DA 11-1595, 26 FCC Rcd. 13206, ¶29 (released September 22, 2011) (*AT&T Cablevision Order*); *see also*, Order, *Verizon Telephone Companies and Verizon Services Corp., Complainants, v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants*, DA 11-1594, 26 FCC Rcd. 13145, ¶28 (released September 22, 2011) (*Verizon Cablevision Order*).

In some respects, the importance of access to vertically integrated cable programming has increased since the Commission last extended its program access rules in 2007. This is due in part to the continued control of must-have programming by an increasing number of vertically integrated cable MVPDs, as well as the substantial growth in the number of non-replicable and popular regional sports networks (RSNs) controlled by vertically integrated cable providers. Access to this vertically integrated content is critical for all competitive MVPDs, and particularly those providing service in remote and rural areas.

The importance of access to vertically integrated cable programming by rural MVPD providers is particularly important, given the Obama Administration's emphasis on rural broadband deployment and adoption. Ultimately, while much has changed in the MVPD marketplace, there remains a need for the Commission's program access rules. By maintaining access to vertically integrated cable programming and content, the Commission will enhance the developing competition in the MVPD marketplace, and further promote increased competitive broadband deployment, particularly in rural areas.

II. ACCESS TO MUST-HAVE PROGRAMMING REMAINS CRITICAL TO ENSURING ROBUST MVPD COMPETITION.

USTelecom's member companies, of all sizes, have been aggressively entering the MVPD market throughout the country. In many of these areas they compete directly with vertically integrated cable companies for customers for video, broadband and voice services. The entry of local telephone companies into the competitive video marketplace has greatly benefitted consumers by providing them an alternative to the incumbent which, as the Commission has previously found, has also led to lower consumer prices than in areas without a wireline cable competitor. The Commission has also recognized that a successful video offering is directly related to an ILEC's ability to deploy robust broadband facilities.[18]

But as the Commission is well aware, the ability of LEC video service providers to compete effectively is often dependent on access to essential programming that was acquired by the very cable companies against which they are competing long before they were in the market. In this context, USTelecom member companies have previously had a number of well-publicized and protracted disputes with vertically integrated cable companies over access to programming under their control.[19] The Commission's recent actions to strengthen its programming access rules and dispute processes were a necessary step in response to these recurring instances where incumbents had refused to provide competitor's access to "must have" programming. The Commission should continue to ensure reasonable access to video programming through extension of its program access rules.

A. Vertically Integrated Networks Remain Must-Have Programming for MVPD Competitors.

A critical element to the Commission's analysis relates to programming owned by vertically integrated programming cable companies. Very little has changed since the

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[18] *See e.g.*, Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd. 5101, ¶51 (2006) (concluding that "broadband deployment and video entry are 'inextricably linked'") (*Franchise Reform Order*); *Franchise Reform Order*, ¶62 (stating that, "[t]he record here indicates that a provider's ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated."); Report and Order, Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 FCC Rcd 20235, ¶20 (2007) (*MDU Order*) (stating that "broadband deployment and entry into the MVPD business are 'inextricably linked.'"); First Report and Order, *Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, 25 FCC Rcd. 746, ¶36 (2010) (concluding that "a wireline firm's decision to deploy broadband is linked to its ability to offer video.") (*Program Access Order*).

[19] *See e.g.*, *AT&T Cablevision Order*; *see also*, *Verizon Cablevision Order*.

Commission last examined this issue in 2007. In fact, vertical integration by cable incumbents has *increased* since the Commission's last extension. These increases can be seen in such areas as the number of vertically integrated RSNs (from 18 in 2007, to 57 today)[20] and the number of vertically integrated cable operators (from 5 in 2007, to 6 today).[21]

As the Commission acknowledges in its Notice, the number of vertically integrated networks remains virtually unchanged since it last extended the Program Access rules in 2007. There are now 115 vertically integrated program networks as compared to five years ago, when there were 116.[22] During this same timeframe, the number of vertically integrated networks within the top 25 programming networks by subscribership increased from 6 to 7.[23]

1. The Number of Vertically Integrated Networks is Unchanged.

These vertically integrated programs represent much more than so-called 'must-have' programming. Rather, they have become fixtures on the expanded basic packages of MVPDs seeking to compete in today's marketplace. These programming channels include Lifetime, A&E, Syfy, E! Entertainment Television, Bravo, the History Channel, the Weather Channel and the USA Network.[24] Just how much of a fixture have these vertically integrated cable channels become in the MVPD marketplace? In examining the top programming services by subscribership or prime-time rating from the Commission's 1995 Video Competition report, virtually all the same channels were on the list.[25]

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[20] *Notice*, Appendix C, Table 1, p. 70.

[21] *Id.*, Appendix B, Table 1, p. 65.

[22] *Id.*, p. 64.

[23] *Id.*, p. 65.

[24] *See*, *Notice*, Appendix B, Table 2.

[25] The History Channel is the only networks not appearing on the Commission's lists from 1995. *See*, *Second Annual Report*, Tables 5 – 6.

2. RSNs are Particularly Important, Given the Popularity of the Programming and its Non-Replicable Nature.

A more troubling expansion has occurred with respect to RSNs under the control of cable incumbents, which have *increased substantially* since 2007. In fact, the number of vertically integrated RSNs has *more than tripled* since when the Commission last considered extension of the program access rules, from 18 in 2007 to 57 today.[26] As the Commission acknowledges in its Notice, more than half of all RSNs today are vertically integrated with a cable operator. Given the well-established must-have, non-replicable nature of such programming, the Commission must ensure at a minimum that its program access rules continue to apply to vertically integrated RSNs.

RSNs have repeatedly been cited by the Commission as a major concern in the MVPD marketplace. For example, the Commission has previously concluded that lack of access to RSN programming can decrease an MVPD's market share "significantly," thereby having a "material adverse impact" in the MVPD marketplace.[27] The Commission's recent orders regarding Cablevision's withholding of RSNs from its competitors acknowledged a long catalogue of anti-competitive behavior by Cablevision with respect to its withholding.

In that proceeding, the Commission addressed separate complaints filed against Cablevision by AT&T and Verizon in the summer of 2009. AT&T's complaint addressed withholding of RSNs by Cablevision in the state of Connecticut, while Verizon's complaint addressed withholding of RSNs by Cablevision in the New York City and Buffalo, New York

[26] *Notice*, p. 70, Table 1.

[27] *See, Program Access Order*, ¶39.

markets.[28] In each instance, the Commission found "two significant anticompetitive harms resulting from [Cablevision's] withholding" of RSNs from both AT&T and Verizon.[29] First, the Commission concluded that Cablevision's withholding or RSNs from both AT&T and Verizon "significantly hinders" their ability to compete in various designated market areas (DMAs), which "in turn harms consumers by limiting video competition in those markets."[30] Second, the Commission also concluded that, "an act that impedes the ability of an MVPD to provide video service can also impede the ability of an MVPD to provide broadband services."[31]

In discussing how the withholding of RSNs negatively impacted MVPD competition, the Commission explained that, "when programming is non-replicable and valuable to consumers, such as regional sports programming, no amount of investment can duplicate the unique attributes of such programming, and denial of access to such programming can significantly hinder an MVPD from competing in the marketplace." The Commission further stated that "given the non-replicable nature of the content on [Cablevision's RSNs]," companies like AT&T and Verizon had "no ability to formulate a viable competitive response" that would allow either of them "to compete for the many subscribers that highly value these networks."[32]

In previous instances, the Commission has concluded that the withholding of RSN content has a substantial impact on the ability of MVPDs to compete. The Commission has

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[28] Although both companies were offered access to Cablevision's RSN standard definition signals, both Verizon and AT&T were repeatedly denied access to the RSN HD programming for the New York Knicks, the New York Rangers, the New York Islanders, the New Jersey Devils, and televised local and national college football and basketball games. Verizon was also denied access to programming for the Buffalo Sabres in the Buffalo market. *See*, *Verizon Cablevision Order*, ¶¶6-7; *see also*, *AT&T Cablevision Order*, ¶¶6-7.

[29] *See*, *Verizon Cablevision Order*, ¶38; *see also*, *AT&T Cablevision Order*, ¶39.

[30] *Id.*

[31] *Id.*

[32] *Id.*

previously pointed to the withholding of cable-affiliated RSNs in Philadelphia and San Diego, where competitive MVPD subscription rates were 40% and 33% below, respectively, of what would otherwise be expected.[33] This is exactly the type of anti-competitive behavior the Commission's rules were meant to address, and there is simply no policy basis for the Commission to sunset these protections.

With respect to broadband, the Commission acknowledged in its 2010 order regarding RSNs that a "wireline firm's decision to deploy broadband is linked to its ability to offer video" and that an act that "imped[es] the ability of MVPDs to provide video service . . . can also impede the ability of MVPDs to provide broadband services."[34] In its orders last year, the Commission concluded that Cablevision's withholding of RSNs from AT&T and Verizon, "imped[ed] broadband deployment."[35] Indeed, the Commission found that Cablevision conceded to licensing the same content to DBS competitors, "because, unlike Verizon, DBS operators do not offer voice or broadband service."[36]

B. Vertically Integrated Cable Providers Retain the Incentive and the Ability to Withhold Programming From Competitors.

When the Commission last extended its program access rules in 2007, it acknowledged some of the stark realities in the MVPD marketplace. Among other things, it concluded that vertically integrated programmers had both the incentive and ability to favor their affiliated cable

[33] Memorandum Opinion and Order, *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation, Assignors to Time Warner Cable, Inc., Assignees, et al.*, 21 FCC Rcd 8203, 8271, FCC 06-105, ¶ 149 (released July 21, 2006). *See also, AT&T Cablevision Order,* n. 8; *Verizon Cablevision Order*, n. 8.

[34] *Program Access Order,* ¶36.

[35] *Id.*, ¶41.

[36] *Verizon Cablevision Order,* n. 196. The Commission reached an identical conclusion in the complaint involving AT&T. *See*, *AT&T Cablevision Order,* n. 162.

operators over competitive MVPDs.[37] Many of the reasons acknowledged by the Commission in 2007 remain true today for wireline entrants who continue to mature in the MVPD marketplace. In some cases, these problems have grown more acute.

For example, the Commission concluded in 2007 that the number of national and regional satellite-delivered programming networks vertically integrated with cable operators had increased.[38] As noted previously, the number of vertically integrated RSNs has more than tripled since the last extension of the program access rules, from 18 in 2007 to 57 today,[39] while the number of vertically integrated national programming channels has remained largely unchanged.[40]

RSNs in particular are one area where the incentive and ability of vertically integrated cable MVPDs to withhold such content has substantially increased since the Commission's last extension of the program access rules in 2007. In fact, when the Commission extended its program access rules in 2007, it did so in the context of an MVPD marketplace where the number of vertically integrated RSNs had actually *decreased* since the previous extension in 2002.[41] As the Commission considers whether to extend the program access rules in the current MVPD marketplace, it must weigh its consideration of an extension where the vertically integration of RSNs has greatly increased.

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[37] *Program Access Order*, ¶29.

[38] *Id.*, ¶¶18, 21.

[39] *Notice*, p. 70, Table 1.

[40] *Notice*, Appendix B, Table 1, p. 64. There are now 115 vertically integrated program networks as compared to five years ago, when there were 116.

[41] *Program Access Order*, ¶33 (stating that "[w]ith respect to RSNs . . . the number of vertically integrated RSNs has decreased from twenty-four in 2002 to seventeen in 2005.").

As the Commission is well aware, recent MVPD entrants simply lack the option of investing in or developing their own substitute, given the extraordinary barriers to entry in sports programming. For example, most sports leagues tightly limit team creation and many sports teams already have exclusive contracts with other distributors, including vertically integrated cable companies. This fact was recently underscored by Time Warner Cable's Chairman and Chief Executive Officer, Glenn A. Britt during an investor conference call discussing the 2012 first quarter earnings.[42] When discussing the acquisition of the rights to sports programming, Britt acknowledged that "[m]ost of the sports rights are tied up for many, many years to come."[43]

As their history clearly demonstrates, given the opportunity, vertically integrated cable providers can and will withhold exclusive programming, such as RSNs, to harm competitors. When the Commission last extended the program access rules in 2007, it concluded that the emergence of new MVPD competitors actually *increased* the incentive of vertically integrated cable companies to withhold their programming.[44] Given the opportunity, vertically integrated MVPDs will not hesitate to withhold their programming from new MVPD entrants. The Commission's orders from last year addressing Cablevision's withholding of vertically integrated RSNs underscores this point.

With respect to the programming controlled by cable incumbents and competitors' need for access to it, very little has changed in the MVPD marketplace since the Commission last

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[42] Seeking Alpha website, *Time Warner Cable Management Discusses Q1 2012 Results - Earnings Call Transcript*, (available at: http://seekingalpha.com/article/531451-time-warner-cable-management-discusses-q1-2012-results-earnings-call-transcript?part=qanda) (visited June 20, 2012) (*Time Warner Transcript*).

[43] *Id*.

[44] *Program Access Order*, ¶ 29 (where the Commission found "some trends that increase [vertically integrated cable providers'] incentive to withhold programming, such as . . . the increase in cable clustering, and the recent emergence of new competitors.").

extended its program access rules in 2007. The Commission will stifle the maturing ILEC competition to cable incumbents in the MVPD marketplace if it fails to extend the program access rules.

C. A Market-by-Market Analysis Fails to Account for Incumbent Cable's National Market Leverage.

In its Notice, the Commission asks whether it would be appropriate to replace its existing program access rules with other mechanisms, such as a market-by-market analysis of a designated market area (DMA) where a cable incumbent can show competition from new MVPD entrants;[45] or application of Section 628(b) on a case-by-case basis. Approaches such as these, however, raise several problematic issues, particularly for smaller, rural wireline video entrants whose ability to offer competitive video services is essential to increasing rural broadband deployment.

Smaller, wireline entrants – particularly those competing in the vast majority of smaller DMAs – are competing against large, national cable incumbents that are much better able to spread the costs of programming across their nationwide customer base. Moreover, as noted in other Commission proceedings, the operating margins for most small MVPDs – particularly for smaller, rural telcos – are "de minimus, if not negative."[46] Even with the protections of the Commission current program access rules, smaller MVPDs "cannot afford to engage in protracted litigation at the Commission over video matters facing large corporate programmers

[45] *Id.*, ¶114.

[46] Comments of, The National Rural Telecommunications Cooperative, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, MB Docket No. 07-269, p. 16 (submitted June 8, 2011) (*NRTC Comments*).

with billions of dollars in revenue and armies of lawyers ready to battle any challenges to their practices."[47]

Comments filed at the Commission in response to a cable industry petition in 2010 highlight the disparity in these rural markets.[48] In comments filed by a group of rural LECs, they noted that while several vertically integrated cable companies – such as Comcast and Cablevision – had customers numbering in the tens of millions, the rural LECs each had voice subscriber counts that in some cases numbered in the hundreds.[49] They went on to note that while these same cable companies – which originally built their respective networks to provide MVPD services "only where densities would make cable service financially viable on its own"[50] – could transition to voice with "relatively small incremental investment."[51] The same is not true for rural LECs transitioning to video. Rather, only with a "large investment" could rural LECs enter the MVPD marketplace. But even then, incumbent cable's "advantage in scope and scale"

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[47] *Id.*

[48] See, Public Notice, *Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service Highcost Support Provided to Carriers in Areas Where There is Extensive Unsubsidized Facilities-Based Voice Competition*, DA 09-2558, GN Docket No. 09-51, WC Docket No. 05-337, RM-11584 (released December 8, 2009) (*NCTA Petition Proceeding*) (In that proceeding, the Commission put a National Cable & Telecommunications Association petition on public notice which asked the Commission to begin a rulemaking to reduce universal service high-cost support to carriers in areas where there is unsubsidized facilities-based wireline voice competition. NCTA's petition asserted that there is widespread cable voice coverage, and proposed that cable companies be allowed to challenge the high-cost USF provided to an ILEC if more than 75% of the households in the ILEC study area had a facilities-based wireline voice alternative, or if the ILEC's retail rates were deregulated.).

[49] See, Comments of the Washington Independent Telecommunications Association, The Oregon Telecommunications Association, and The Colorado Telecommunications Association, *NCTA Petition Proceeding*, p. 3 (submitted January 7, 2010) (*WTA, OTA, CTA Comments*).

[50] *Id.*

[51] *Id.*

allows them to compete with LECs "initially at a loss," and support their rural deployment through "their large urban market operations."[52]

Moreover, under the Commission's proposed approaches, companies such as these would be placed on equal competitive footing with MVPDs such as Comcast and Cablevision, despite the vast differences in overall market share, number of subscribers and program purchasing power. Such an approach would inure solely to the benefit of major cable incumbents, and would allow for sunset of the rules in the very markets where wireline competition to cable is most needed. Under either of the Commission's proposals, large cable incumbents could simply refuse to provide must-have programming to nascent wireline competitors upon Commission designation of a competitive market, thereby extinguishing the competitive threat and its inherent consumer benefits.

III. IT REMAINS PREMATURE FOR THE COMMISSION TO CONSIDER A SUNSET OF THE PROGRAM ACCESS RULES.

In its *Notice*, the Commission seeks comment on whether it should retain, sunset, or relax the prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming for non-affiliated MVPDs. The vast majority of consumers – approximately 85% – obtain their video programming through MVPD services.[53] Moreover, a majority of those MVPD subscribers obtain their service from vertically integrated cable MVPDs. Given the essential nature of the program access rules to spurring video competition and to the Commission's broadband policies, and the continued maturation of competitive bundled voice, video and

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[52] *Id.*

[53] Data regarding the current MVPD penetration rate is based on USTelecom analysis utilizing Frost and Sullivan Stratecast and US Census data. *See*, note 61, *infra*.

broadband offerings from LECs, it would be premature for the Commission to sunset the rules at this time.

A. The Vast Majority of Consumers Continue to Subscribe to MVPD Services

The development of the MVPD marketplace over the last two decades has been a resounding success story. Since the passage of the 1992 Cable Act, MVPD penetration has increased from 57.2 million subscribers and approximately 62% of the marketplace to 101.2 million subscribers and approximately 85% of the marketplace today. MVPD services and technologies have evolved from a nascent service just twenty years ago, to a nearly ubiquitous presence in American households. Even with the increased availability of video content through broadband enabled platforms, the data shows that consumers overwhelmingly – and increasingly – consume video content through subscriptions to MVPD services.

Available data demonstrates an increase in MVPD subscribership both in total subscribers and as a percentage of households. Data obtained by USTelecom indicates that between 2007 (the year of the last program access extension) and 2011, MVPD subscribership increased from 96.7 million to 101.2 million. During that same period, MVPD subscribership as a percentage of households increased from approximately 82.9% in 2007 to 84.8% in 2011.[54] This increase in subscribership occurred despite the historic economic downturn in recent years. In fact, one survey conducted in May, 2011, found that MVPD services were one expense Americans were unwilling to cut, with 76% indicating that they had no interest in cancelling

[54] Data regarding the current MVPD penetration rate is based on USTelecom analysis utilizing Frost and Sullivan Stratecast and US Census data. *See*, note 61, *infra*.

MVPD service, and more than half reporting that they were "very unlikely" to cancel their MVPD service.[55]

Analysis of data regarding the ability of consumers to access video content through other means – such as reliance on over the air (OTA) technologies or Internet streaming – produce different results, but the same conclusion: MVPD services are the predominant source of such content. For example, at the same time that consumers are increasingly moving to MVPD services, data shows a decrease in consumers relying on OTA technologies. One survey shows that the percentage of households utilizing an OTA antenna as their only form of program reception decreased from approximately 12% of households in 2005, to 8% of households in 2010.[56]

At the same time, while the use of OTA has been decreasing, the use of over-the-top services has been increasing. Numerous providers of over-the-top video services, including Netflix, Hulu Plus, Amazon Prime, Apple, Crackle, VUDU, YouTube, and Vimeo, offer services over multiple platforms, including computers, tablets, cell phones, and external devices connected to televisions (such as Xbox or Apple TV). Globally, Internet video traffic will be 54 percent of all consumer Internet traffic in 2016, up from 51 percent in 2011.[57]

But even with this substantial increase in their use and adoption, most agree that these services are viewed by consumers as an add-on to existing MVPD services, not a replacement.

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[55] Consumer Electronics Association Report, *Cord Cutting and TV Service: What's Really Going On?*, May 2011, p. 1 (available at: http://www.cesweb.org/shared_files/ECD-TOC/CEACordCuttingAnalysis.pdf) (visited June 18, 2012) (*CEA Survey*).

[56] *CEA Survey*, p. 2.

[57] White Paper, *Cisco Visual Networking Index: Forecast and Methodology, 2011 – 2016*, at 2 (available at: http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-481360.pdf) (visited June 18, 2012).

The New York Times reported late last year that "[e]ven as Internet video viewing increases, the vast majority of American households are still paying for television subscriptions and watching most video that way."[58] The same article noted that "Netflix and services like it are increasingly being positioned as supplements, not replacements, for traditional TV subscriptions."[59]

B. Incumbent Cable Operators Continue to Claim the Majority of MVPD Subscribers.

Much has been made of the DC Circuit's statement in its 2010 opinion affirming the Commission's program access rules. In its opinion, the court stated that it "anticipate[s] that cable's dominance in the MVPD market will have diminished still more by the time the Commission next reviews the prohibition."[60] Contrary to the court's prediction, however, cable's control over vertically integrated programming continues, and in some respects has actually *increased* since the court's decision.

USTelecom examined data, demonstrating that incumbent cable operators still retain approximately 58% of the MVPD market.[61] Moreover, the six vertically integrated cable

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[58] Stelter, Brian, *Cable is Holding Web TV at Bay, Earnings Show*, New York Times, October 30, 2011 (available at: http://www.nytimes.com/2011/10/31/business/media/cable-tv-holding-web-rivals-at-bay-earnings-show.html) (visited June 11, 2012) (*Web TV Article*). *See also*, Reardon, Marguerite, CNET, *Netflix is Cable's 'Frenemy,'* May 23, 2012 (available at: http://news.cnet.com/8301-1023_3-57440270-93/netflix-is-cables-frenemy/) (visited June 11, 2012) (noting that companies like Netflix can "offer a value to its cable partners by helping them grow their audience. He used the popular AMC series "Mad Men" as an example. He said that between the long period between season 4 and season 5 of the series, millions of new viewers started watching the series for the first time on Netflix's streaming service. And because Netflix offered all four previous seasons, these viewers could "catch up" on the series before the Season 5 debut. Now, these new viewers are able to watch the current season of the show on AMC.").

[59] *Web TV Article*.

[60] *Cablevision Sys. Corp. et al. v. FCC*, 597 F.3d 1306, 1314-15 (D.C. Cir. 2010).

[61] *See e.g.*, *Notice*, Appendix A, p. 61 (stating that the percentage of MVPD subscribers attributable to cable at 58.3 million). This is consistent with USTelecom's analysis which shows LEC providers offering IPTV MVPD service with 8.9 million subscribers (8.8% of the MVPD market); incumbent cable MVPDs with 58.3 million subscribers (57.7% of the MVPD market), and DBS MVPD providers with 33.8 million subscribers (33.5% of the MVPD market)

operators identified by the Commission in its Notice hold approximately 52% of the MVPD market.[62] While incumbent cable's share of the MVPD market has indeed decreased since 2007, some vertically integrated cable MVPDs have actually increased their subscriber base since the Commission last extended the program access rules. For example, between the 4th quarter of 2008 and the 4th quarter of 2011, Cablevision has seen an *increase* in MVPD subscribers from 3.1 million to 3.2 million, respectively, in the midst of a very competitive environment.[63]

C. Wireline Video Entrants are Essential to a Fully Competitive MVPD Market, and Need Additional Time to Mature in the Marketplace.

One of the main purposes of the program access rules is to increase competition in the MVPD marketplace. As policy makers were aware at the time the original program access provisions were passed and implemented, such competition would lead to numerous consumer benefits, including increased consumer choice, lower prices and improved customer service. In recent years, this increased competition is also leading to increased broadband penetration and adoption – an important Administration and Commission goal. But in order for the Commission to realize the many benefits from this increased competition, it is essential that wireline video entrants are afforded sufficient time to mature in the MVPD marketplace.

(footnote cont'd.)
as of the 4th Quarter, 2011. *See*, Frost & Sullivan Report, *North American Video Tracker: Fourth Quarter 2011*, CCS 6-7, p. 17 (April 2011) (*Frost & Sullivan Report*).

[62] The six vertically integrated cable operators identified by the Commission in its Notice are Comcast, Time Warner Cable, Cox, Cablevision, Bright House and Charter. *Notice*, pp. 66 – 69, n. 38. *See also*, MediaBiz website, *The Bridge*, April 2012 (available at: http://www.mediabiz.com/thebridge/?release_id=187#1215) (visited June 21, 2012) (*MediaBiz 2012 Website*) (demonstrating that the six vertically integrated cable MVPDs held approximately 48.8 million subscribers).

[63] *See*, *MediaBiz 2012 Website* (showing Cablevision with 3.2 million subscribers in the 4th quarter of 2011); *see also*, MediaBiz website, *The Bridge*, July 2010 (available at: http://www.mediabiz.com/thebridge/?release_id=180#1153) (visited June 21, 2012) (showing Cablevision with 3.1 million subscribers in the 4th quarter of 2008).

Wireline entrants are the only video competitors that act as an effective restraint on cable prices. In particular, the Commission has recently recognized that wireline LEC entrants "pose a greater competitive threat than DBS to cable operators and data indicating that DBS operators do not constrain the price of cable service to the extent that wireline MVPDs do."[64] The Commission recently affirmed this conclusion in its 2012 report on cable industry prices for 2010. In its report released in March of this year, the Commission concluded that average prices were 9.6 percent lower in markets with a second wireline competitor.[65]

The Commission's encouraging findings in its report on cable industry prices are affirmed by recent developments in the MVPD marketplace. Many cable incumbents – feeling the increasing competitive pressure from LEC competition – are beginning to offer creative low-cost cable subscription packages. For example, last year Time Warner Cable rolled out a $29.99 TV Essentials plan[66] and Comcast soon followed with a $24.95 offering.[67] And earlier this year, Cox Cable followed suit and began offering a new package called TV Economy priced at $34.99.[68]

With LEC deployment of video services throughout the United States now underway in earnest, consumers in these markets are experiencing fierce competition in services other than video, including consumer voice and broadband services. According to cable industry statistics,

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[64] *AT&T Cablevision Order*, ¶29; *see also, Verizon Cablevision Order*, ¶28.

[65] Report on Cable Industry Prices, *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, 27 FCC Rcd. 2427, ¶5 (released March 9, 2012).

[66] Adegoke, Yinka, Reuters, Time Warner Cable tries cheaper TV packages, no ESPN, November 18, 2010 (available at: http://www.reuters.com/article/2010/11/18/timewarnercable-idUSN1810537520101118) (visited June 18, 2012).

[67] Comcast website, *Introducing MyTV Choice™* (available at: http://www.comcast.com/mytvchoiceoffer/?SCRedirect=true) (visited June 12, 2012).

[68] Cox website, *Cox TV Economy* (available at: http://ww2.cox.com/residential/idaho/tv/tv-economy.cox) (visited June 18, 2012).

basic cable phone subscribers have nearly doubled since the last extension of the program access rules, from 14.9 million customers in 2007, to 25.3 million in 2011. One report released in 2007 – as LECs were just beginning to enter the video market – concluded that consumers had "already received benefits of $23.5 billion from cable voice competition over the past four years and from the competitive response of the ILECs over the past two years."

In order to foster this continued competition, it is imperative that the Commission provide local telephone companies with sufficient time to mature in the competitive MVPD marketplace. USTelecom believes an illustrative example can be found in the history of the DBS industry's entry into the MVPD marketplace. At the time the 1992 Cable Act was passed, DBS providers served a mere 40,000 subscribers.[69] But even with the benefits of the Commission's program access rules, it still took approximately seven years from their adoption in 1992 for DBS providers to reach the number of subscribers attained by LEC MVPDs today (*i.e.*, approximately 8.9 million),[70] and it was not until 2004 that DBS providers were able to obtain 25% of subscribers in the MVPD marketplace.[71] As acknowledged by the Commission, the DBS

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[69] *Notice*, Appendix A, p. 61.

[70] Ninth Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 02-338, 68 Fed. Reg. 3252, p. 75, Appendix B, Table B-1 (released December 31, 2002) (*Ninth Report*) (noting that DBS subscribership was 7.2 million as of June of 1998, and 10 million as of June of 1999); *see also, Frost & Sullivan Report,* p. 17.

[71] Eleventh Annual Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 05-13, 20 FCC Rcd. 2755, p. 115, Appendix B, Table B-1 (released February 4, 2005) (*Eleventh Report*). It is also important to note the technical differences between the MVPD service offerings of DBS and LEC providers. Whereas DBS technology enables ubiquitous, nationwide coverage through the launch of a single satellite to one of three designated orbital slots, LEC entrants must deploy their services on a market by market basis. As a result, once a DBS provider places a satellite into orbit, there is no difference in the incremental costs of serving an urban versus a rural market. The exact opposite is true for LEC providers, since the cost of serving a rural market is substantially higher than costs of serving an urban market.

industry's effectiveness in the MVPD marketplace was due in large part to the protections afforded under the Program Access statute.[72]

In contrast, the majority of LEC entry into the MVPD marketplace did not begin in earnest until approximately 2007 and 2008; meaning that much of the LEC industry's marketplace entry occurred only *after* the Commission's most recent extension of the program access rules. Having only been in the MVPD marketplace for approximately 4 years, LEC entrants have been afforded little time to fully benefit from the protections afforded under the Commission's program access rules.

As the Commission examines whether to extend the program access rules, its assessment should acknowledge the fact that the competitive environment in today's MVPD marketplace encompasses much more than just the deployment of video services. Due to the technological nature of their respective platforms, both LEC and cable incumbent providers are competing aggressively by offering consumers bundled packages of voice, video and broadband. When examined in this more appropriate context, cable MVPDs are thriving.

According to the cable industry's trade association, cable high speed Internet access alone is available to 93% of U.S. households,[73] and cable operators currently serve 25.9 million

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[72] *See e.g.*, Report, *The Information Needs of Communities*, p. 111 (released June 9, 2011) (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-307406A1.pdf) (visited June 21, 2012) (stating that "[e]ven more critically, in 1992 Congress went further and enacted the "program access" requirements (section 628), which essentially prevented cable companies from denying popular programming to DBS and enabled DBS to begin offering this content to its viewers. This boost was sufficient to get DBS off the ground."); *see also*, FCC Staff Working Paper 1, *Transformative Choices: A Review of 70 Years of FCC Decisions*, (released October 29, 2010) (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-302511A1.pdf) (visited June 21, 2012) (stating that "in the years immediately following the franchise awards, additional help was needed: access to the programming carried by cable operators. DBS, though authorized in 1982, reemerged as a commercial service only in 1994, six years after Congress passed program access legislation.").

voice customers.[74] Cable operators offering "triple play" services are formidable competitors in today's communications marketplace. For example, Comcast recently announced that in 2011, it added 1.4 million net new customers for offerings of its voice, video and broadband services. Its nominal losses in video subscribers (approximately 500,000), were more than offset by substantial gains in subscribers to its voice and broadband services (nearly two million new subscribers total).[75] Time Warner reported similar results in the first quarter of 2012, with 112,000 voice subscriber additions and 214,000 broadband Internet subscriber additions. In fact, Time Warner also reported 125,000 net subscriber additions for its bundled triple play offering of voice, video and broadband services.[76] While the LEC industry's penetration in the MVPD marketplace has been impressive, more time is needed for the Commission and consumers to realize the full benefits of robust competition.

IV. THE PROGRAM ACCESS STATUTE IS A FULCRUM FOR THE COMMISSION'S BROADBAND POLICIES.

The Commission's extension of the program access rules is an essential component to realizing the Obama Administration's broadband policies. In addition to acknowledging the substantial competitive and consumer benefits that flow from the rules in the MVPD marketplace, the Commission has consistently emphasized how access to critical vertically integrated programming fuels broadband deployment and increases broadband penetration.[77] On

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(footnote cont'd.)

[73] *See*, National Cable and Telecommunications Association website, *Availability* (available at: http://www.ncta.com/StatsGroup/Availability.aspx) (visited June 18, 2012).

[74] *See*, National Cable and Telecommunications Association website, *Industry Data* (available at: http://www.ncta.com/Statistics.aspx) (visited June 18, 2012).

[75] *See*, *Comcast 2011 Annual Review*, p. 3.

[76] *See*, Time Warner Cable, First Quarter 2012 Results, p. 3 (April 26, 2012).

[77] *See*, note 18 *supra*.

numerous occasions the Commission has concluded that broadband deployment and MVPD competition are "inextricably linked."[78]

Because the deployment of broadband networks and the provision of video service are intrinsically linked, the lack of access to vertically integrated cable programming makes entry into the video market more risky. This diminishes the incentive of wireline competitors to deploy advanced services capable of transmitting video to consumers. In some cases, absent reasonable access to vertically integrated cable programming, new wireline entrants will be unable to deploy viable, competitive MVPD services and associated broadband offerings. Under protections afforded by the Commission's current rules, however, an increasing number of wireline entrants are pursuing MVPD market entry, particularly in rural areas.

For example, a group of rural interests last year informed the Commission that while DBS offerings by rural telephone providers had "declined significantly," since 2007, Internet Protocol Television (IPTV) had shown a steady advance, growing from 61 rural providers in 2007 to 159 in 2010.[79] These numbers are further buttressed by NECA's most recent 'Trends

[78] *See e.g., Franchise Reform Order* ¶51 (concluding that "broadband deployment and video entry are 'inextricably linked'"); *Id.*, ¶62 (stating that, "[t]he record here indicates that a provider's ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated."); *MDU Order*, ¶20 (stating that "broadband deployment and entry into the MVPD business are 'inextricably linked.'"); *Program Access Order*, ¶36 (concluding that "a wireline firm's decision to deploy broadband is linked to its ability to offer video.").

[79] *See*, Comments of The National Telecommunications Cooperative Association; The Independent Telephone and Telecommunications Alliance; The Organization for the Promotion and Advancement of Small Telecommunications Companies; The Rural Independent Competitive Alliance; and The Western Telecommunications Alliance, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, p. 2 (June 8, 2011) (stating that in 2007, 106 members provided video via DBS, but in 2010 that number had dropped to 66).

Report,' which reported that 240 companies offered IPTV in 2010, with an additional 41 planning to deploy the service in 2011.[80]

These recent and planned deployments of IPTV services in rural areas highlighted by NECA have occurred since the Commission's last extension of the program access rules in 2007. Moreover, the NECA report concludes that companies "offering DSL with a video component or option have a DSL adoption rate nearly 24 percent higher than companies offering DSL without access to any video services."[81]

NECA concluded in its Trends Report that its members serve "small customer bases spread over vast geographical areas, requiring more resources per customer than their larger counterparts," and that "[g]aining access to and paying a premium for video content are issues given the low density of subscribers in rural markets."[82] The key to ensuring that LECs can deploy and offer competitive bundled voice, video and broadband services in rural areas is continued reasonable access to video content. It is therefore imperative that the Commission retain its program access rules.

V. CONCLUSION

Consumers are benefitting from the robust competition taking place in the MVPD and broadband marketplace. Prices are falling, providers are deploying broadband infrastructure to rural areas, and rival MVPDs are increasingly offering new technologies, program packages and services to consumers. To preserve and expand these benefits, the Commission must ensure that

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[80] National Exchange Carrier Association Report, *Trends 2010, A Report on Rural Telecom Technology*, p. 12 (*NECA 2010 Trends Report*) (available at: https://www.neca.org/cms400min/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=4892&libID=4912) (visited June 18, 2012).

[81] *Id*.

[82] *NECA 2010 Trends Report*, p. 4.

MVPD competition continues to grow and thrive. Continued access to key programming and content are critical to competitors seeking to provide consumers with video alternatives to incumbent cable operators. In pursuit of this goal, and for the reasons stated above, the Commission should extend the section 628 ban on exclusivity for five years.

Respectfully submitted,

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